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AFTER FINAL
EXPEDITED PROCEDURE

October 16, 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of H. Hofland, D. Lamons, and X. Meng
Application No. 09/996,838 Group No. 1632
Filed November 29, 2001 Examiner J. Epps-Ford
Natural and Anionic Colloidal Particles for Gene Delivery

(Attorney Docket No. P 23,643-A USA)

CERTIFICATE OF FACSIMILE

I hereby certify that this correspondence is being transmitted by facsimile to the Commissioner of Patents at 571-273-8300 on Monday, October 16, 2006.

Gene J. Yao

BOX AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

The present Request for a Pre-Appeal Brief Review is being submitted concurrently with a Notice of Appeal and follows the issuance of a final Action on April 14, 2006 (hereafter, the "final Action").

The pending claims are Claims 1, 7, 11, 14, 15, and 18 to 23 (the final Action erroneously did not identify Claims 24 to 27 as being pending). Following the issuance of the final Action, applicants filed a Reply on August

14, 2006 (hereafter, the "August 2006" Reply) in which arguments were presented for the traversal of the Examiner's Section 102 and 103 rejections. In addition, the Reply included claim amendments in accordance with recommendations made by the Examiner during a conference by telephone on August 10, 2006 to address a Section 112 rejection. However, in a September 14, 2006 Advisory Action (hereafter, the "Advisory Action"), the aforementioned amendments were not entered; the Examiner indicated they would require an additional search. The Examiner maintained her Section 103 rejection and advised that the Section 102 and 112 rejections would be maintained because the arguments presented in the Reply allegedly related to the claims as amended in the proposed amendment only and thus were moot.

Applicants submit respectfully that each of the Examiner's rejections were in clear error. Each of these rejections is described in further detail below.

Discussion of the Examiner's Section 102 Rejection

In the Advisory Action, the Examiner advised that the Section 102 rejection would be maintained because the traversal arguments presented in the August 2006 Reply were contingent upon entry of the amendments therein and the amendments were not entered. Applicants submit, however, that the Examiner's maintenance of this rejection is in clear error because the arguments presented were not in fact contingent upon entry of the amendments. In fact, the arguments presented in the August 2006 Reply repeat arguments made in the previous January 23, 2006 Reply which relate to the claims in their then-pending form. The arguments remain valid as

applicants' colloid clearly distinguishes structurally from that disclosed in the prior art in that it does not require the presence of an additional layer of anionic lipids or anionic polymers around the DNA-containing complex as the colloid of the prior art does. Inasmuch as the traversal argument is not contingent upon the amendment of the August 2006 Reply, the Examiner's maintenance of the rejection is in clear error.

Discussion of the Examiner's Section 103 Rejection

In the present and previous Actions, the Examiner based her Section 103 rejection on her view that a *prima facie* case of obviousness has been established because applicants have failed to present evidence to rebut the *prima facie* case of obviousness. Applicants submit respectfully that the Examiner's above argument is in clear error because applicants have indeed presented such evidence.

In order to establish a *prima facie* case of obviousness, the Examiner must show, under MPEP §2143, that one skilled in the art would have had a reasonable expectation of success that the invention as claimed would work for its intended purpose. In their Replies of January 23, 2006 and August 14, 2006, applicants have provided evidence as to why there should not be such an expectancy by pointing out that Trubetskoy et al. (a reference cited by the Examiner) states that the addition of anionic compounds to a complex containing DNA and cationic lipids or cationic polymers could lead to destabilization of the complex. As such, one skilled in the art would not have expected that the present invention, which involves the conversion of cationic lipids or cationic polymers in such a complex into anionic or neutral form

would lead to a stable complex (please refer to the above Replies for a more detailed explanation of this argument).

The Examiner has not addressed the above evidence. It is clear error for the Examiner to maintain her Section 103 rejection without addressing why the evidence presented by the applicants does not rebut the establishment of a *prima facie* case of obviousness.

Discussion of the Examiner's Section 112 Rejection

In the present Action, the Examiner maintained her Section 112, written description requirement, rejection because the amendments made in the August 2006 Reply were not entered. According to the Examiner, the claims as amended would require an additional search. This is in clear error because the amendment merely amends the claims to delete language added by a January 23, 2006 amendment which the Examiner objected to and clarifies that the claimed method relates to the modification of the surface potential of a complex contained in a colloid. This is clearly supported in the application (see, for example, Examples 1 and 2). As such, the claims, as amended, are in line with the subject matter of the claims as filed originally (applicants note that, prior to the January 2006 Reply which introduced the language the Examiner objects to, no Section 112, written description requirement, rejection was issued). The amendments, therefore, do not require a new search.

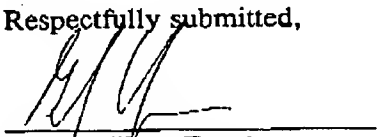
In addition to the above, applicants submit that the substance of the rejection is in clear error as well. As evident from the above, the objection is

really one of indefiniteness. As such, the Examiner's rejection should have been one under Section 112, second paragraph.

Conclusion

In view of the above remarks, applicants submit respectfully that the Examiner's rejections were in clear error and should be withdrawn.

Respectfully submitted,



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BOX AF
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PETITION FOR EXTENSION OF TIME UNDER 37 CFR §1.136(a)

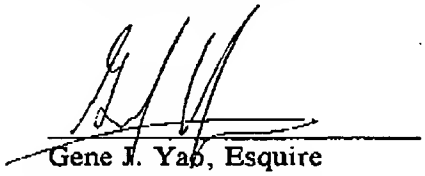
Sir:

It is requested hereby that the term to respond to the Action, dated April 14, 2006, be extended three months, from July 14, 2006 to Monday, October 16, 2006.

A Credit Card Payment Form authorizing the Commissioner to charge the amount of the extension fee is forwarded herewith. The Commissioner is authorized hereby also to charge any additional fees or credit any

overpayment associated with this communication or the accompanying Request to Deposit Account No. 19-5425. A duplicate of this latter is forwarded herewith.

Respectfully submitted,



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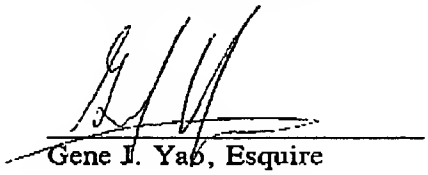

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